

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Television Systems)	MB Docket No. 87-268
and their impact upon the)	
Existing Television Broadcast)	
Service)	

TO: The Commission

**JOINT COMMENTS OF PIEDMONT TELEVISION OF HUNTSVILLE
LICENSE, LLC AND HUNTSVILLE BROADCAST CORPORATION IN
RESPONSE TO
SEVENTH FURTHER NOTICE OF PROPOSED RULEMAKING**

Piedmont Television of Huntsville License LLC ("Piedmont") and Huntsville Broadcast Corporation ("HBC" and, together with Piedmont, "Petitioners") file the following joint comments requesting modification of Piedmont's Form 381 Certification for Station WAAY-DT, Huntsville, Alabama, to specify operation, post-transition, with the facilities set out in WAAY-DT's license application, FCC File No. BLCDDT-20050701ABO.¹ Petitioners further request that Appendix B to Seventh Further Notice of Proposed Rulemaking, MB Docket No. 87-268² be amended to reflect WAAY-DT's constructed DTV facilities.

In support of their request, Petitioners submit that on August 16, 2004, Station WAAY-DT was granted a construction permit, FCC File No. BPCDDT-19991101AGT, for maximization facilities (468 kW ERP at 537.8 m HAAT). On October 28, 2004, the station certified its intention to operate

¹Piedmont is the licensee of Station WAAY-DT, and HBC is the proposed assignee of Station WAAY-TV. See FCC File No. BALCT-20060927APT.

²FCC 06-150, released October 20, 2006 ("Seventh FNPRM").

post-transition, using replication facilities because it intended to operate post-transition on its analog channel.³ The initial channel election was disapproved because the Station's proposed digital operation would cause impermissible interference to DTV channel 30, WIAT, Birmingham, AL.⁴ In response to this, the Station reevaluated its digital plans, changed its channel election to its digital channel, and decided to build full-maximized facilities.⁵ Because the certification date had already passed, the Station could not amend its certification to operate with maximized facilities (on its digital channel post-transition). Had the station known that the Commission would reject its initial DTV channel election, it would have certified maximized facilities at the time of its certification. Clearly, the public interest dictates that the Station be allowed to operate, post-transition, with the maximized facilities it has already built.⁶

Absent grant of the relief sought herein, Station WAAY-DT will be required to operate with replication facilities at the conclusion of the DTV transition in 2009. This would require the station to reduce its effective radiated power to just eleven percent of its present power . Paragraphs 28 and 29 of the Seventh FNPRM recognize that the public interest is better served by allowing stations to

³FCC File No. BFRECT-20050210AEJ electing its analog channel, channel 31, for its post-transition operations.

⁴Letter to Piedmont Television Huntsville License LLC dated June 7, 2005 from Clay C. Pendarvis.

⁵FCC File No. BFRCT-20050809ACC changing the channel election to its allotted DTV Channel, Channel 32.

⁶ Station WAAY-DT's replication facilities are 50 kW ERP at 546 m HAAT, significantly less than the maximization facilities specified in the station's construction permit. On July 1, 2005 it filed its application to license the constructed maximization facilities. See FCC File No. BLCDT-20050701ABO.

change their Form 381 certifications to conform to the DTV facilities that were actually constructed, instead of forcing the stations to operate with their inferior, original certification facilities.

In addition to satisfying the public interest, the Seventh FNPRM authorizes changes to Form 381 certifications when stations can demonstrate: (1) that the area served by its constructed facilities extends beyond the area to which it certified; and (2)that the proposed changes to the certification will not result in facilities causing interference in excess of 0.1 percent to any licensee's existing tentative channel designation.

Attached hereto is a technical exhibit prepared by Louis R. du Treil, Jr., PE, of du Treil Lundin and Rackley, Inc. Therein Mr. du Treil demonstrates that a change to WAAY-DT's Form 381 certifications to specify the constructed WAAY-DT maximization facilities meets the certification amendment criteria of the Seventh FNPRM and serves the public interest. In this connection Petitioners note that acceptance of an amended certification causes no new interference over and above that already caused by WAAY-DT's existing facilities. Indeed, refusal to accept the amended certification will result in loss of DTV service to significant areas and populations. This is particularly significant because loss of service is prima facie inconsistent with the public interest. *See Hall v. FCC*, 237 F. 2d 567 (D.C. Cir. 1956).

In view of the foregoing, Petitioners request that the Commission apply the provisions of the Seventh FNPRM and grant their request (a) that Station WAAY-TV's Form 381 certification be modified to specify the maximization facilities set out in FCC File No. BLCDT-20050701ABO, and (b) that Station WAAY-TV be permitted to continue operating with the facilities specified in FCC

File No. BLCDT-20050701ABO after the DTV transition is completed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph M. DiScipio", written over a horizontal line.

Joseph M. DiScipio

Counsel for

Piedmont Television of Huntsville License, LLC

A handwritten signature in black ink, appearing to read "Joseph A. Belisle", written over a horizontal line.

Joseph A. Belisle

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November 8, 2006

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TECHNICAL EXHIBIT
IN SUPPORT OF JOINT COMMENTS OF
PIEDMONT TELEVISION OF HUNTSVILLE LICENSE, LLC AND
HUNTSVILLE BROADCAST CORPORATION
MB DOCKET NO. 87-268

This Technical Exhibit was prepared on behalf of Piedmont Television of Huntsville License, LLC and Huntsville Broadcast Corporation in support of Joint Comments in MB Docket No. 87-268. This exhibit supports the modification of the certification for WAAY-DT, Huntsville, Alabama (Channel 32). It is demonstrated herein that WAAY-DT's certification facility can be modified to reflect its construction permit facility, which is now built and operating with an application for license pending.*

WAAY-DT holds a construction permit for operation on Channel 32 with a maximum directional effective radiated power (ERP) of 468 kW with an antenna height above average terrain of 538 m (769 m AMSL).[†] The WAAY-DT certified facility specifies operation on Channel 32 with a maximum ERP of 50 kW with an antenna HAAT of 546 m (767 m AMSL).[‡] The geographic coordinates for the WAAY-DT certified and construction permit facilities are nearly identical with a difference in site locations of less than 0.12 km.[§]

An engineering analysis was conducted to determine the predicted interference to all other licensee's potentially affected tentative channel designations (TCD's). The analysis calculated net new predicted interference according to the procedures outlined by the FCC in the *Second DTV Periodic Report and Order*** and related Public Notices. The analysis results are summarized as follows:

* See FCC File No. BLCDT-20050701ABO.

† See FCC File No. BMPCDT-20040730ARJ.

‡ The WAAY-DT certified facility directional antenna pattern is essentially non-directional.

§ The geographic coordinates of the WAAY-DT certified facility are 34-44-15 N.L. / 86-32-02 W.L. The geographic coordinates of the WAAY-DT construction permit facility are 34-44-12 N.L. / 86-31-59 W.L.

** *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18281 (2004).

Analysis of Channel 32, WAAY-DT, Huntsville, CA (468 kW-DA, 769 m AMSL)

Tentative Channel 32 WNCF-DT, Montgomery, AL – Baseline: 580,010
Predicted New IX: 426, 0.07%; Less than 0.15% interference.

Tentative Channel 32 WPGA-DT, Perry, GA
Proposal causes no interference.

Tentative Channel 32 WPSD-DT, Paducah, KY – Baseline: 861,405
Predicted New IX: 170, 0.02%; Less than 0.15% interference.

Tentative Channel 32 WABG-DT, Greenwood, MS
Proposal causes no interference.

Tentative Channel 32 WSBN-DT, Norton, VA
Proposal causes no interference.

Tentative Channel 33 WCFT-DT, Tuscaloosa, AL
Proposal causes no interference.

Tentative Channel 33 WCLP-DT, Chatsworth, GA – Baseline: 2,635,309
Predicted New IX: 3,769, 0.143%; Less than 0.15% interference.

Based on the foregoing, it is concluded that the proposed new certified facility for WAAY-DT as described above would comply with the FCC 0.1% interference requirement. Pursuant to the FCC procedure, this includes the rounding factor, which allows for interference below 0.15% to be deemed compliant with the 0.1% criteria.

There is no significant additional interference that would be received by the WAAY-DT proposed certified facility. However, to the extent that additional interference would be caused to the WAAY-DT proposed new certified facility by other licensee's TCD's, this is hereby accepted.

There are no service area losses for the WAAY-DT proposed certified facility relative to the WAAY-DT present TCD noise-limited service area. The service

baseline population for the WAAY-DT proposed new certified facility is calculated to be 1,289,174 (32,325 sq. km) according to the FCC procedure. The service baseline population for the present WAAY-DT 50-kW TCD is 1,013,796 (24,360 sq. km). Thus, grant of this proposal would allow for an increase in WAAY-DT baseline service population of 275,378 (7,965 sq. km) after the digital transition.



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